

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 5, 2022

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CHRISTINE MCGEE, * No. 18-1778V

Petitioner, * Special Master Sanders

v.

SECRETARY OF HEALTH * Ruling on Entitlement; Influenza
AND HUMAN SERVICES, * ("Flu") Vaccine; Shoulder Injury
* Related to Vaccine Administration
Respondent. * ("SIRVA")

* * * * *

Andrew D. Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for Petitioner.

Jennifer L. Reynaud, United States Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On November 16, 2018, Christine McGee ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program"). Pet. at 1, ECF No. 1; 42 U.S.C. § 300aa-10 to -34 (2012). Petitioner alleges that she sustained a left shoulder injury related to vaccine administration ("SIRVA") as a result of an influenza ("flu") vaccination she received on October 24, 2017. *Id.* at 1.

On January 17, 2020, Respondent filed a report pursuant to Vaccine Rule 4(c), recommending compensation be denied. Resp't's Report at 5–6, ECF No. 25. The parties then filed briefs regarding the onset of Petitioner's shoulder pain. ECF Nos. 34, 37–38. On November 30, 2021, I issued a fact ruling finding Petitioner established by preponderant evidence that she experienced the onset of her left shoulder pain within 48 hours of her flu vaccination. Fact Ruling at 11, ECF No. 39.

Respondent filed an amended Rule 4(c) report on April 1, 2022, advising that Respondent "will not defend the case on other grounds" and noting that "[P]etitioner has otherwise satisfied the criteria set forth in the Vaccine Injury Table and the Qualifications and Aids to Interpretation

¹ This Ruling shall be posted on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted Ruling. If, upon review, I agree that the identified material fits within the requirements of that provision, such material will be deleted from public access.

(“QAI”) for SIRVA.” Am. Resp’t’s Report at 2, ECF No. 43 (citing 42 C.F.R. §§ 100.3(a)(XIV), (c)(10)). Specifically, Respondent noted that Petitioner had no recent history of pain, inflammation, or dysfunction of her left shoulder; the onset of her pain occurred within 48 hours after receipt of an intramuscular vaccine; her pain was limited to the shoulder in which the vaccine was administered; and no other condition or abnormality, such as brachial neuritis, has been identified to explain her left shoulder pain. Am. Resp’t’s Report at 5–6 (citing §§ 100.3(a), (c)(10)). Respondent further noted Petitioner suffered the residual effects of her condition for more than six months. Am. Resp’t’s Report at 6 (citing 42 U.S.C. § 300aa-11(c)(1)(D)(i)). Therefore, Respondent “does not dispute that [P]etitioner has satisfied all legal prerequisites for compensation under the [Vaccine] Act.” Am. Resp’t’s Report at 6.

A special master may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. § 300aa-13; Vaccine Rule 8(d). In light of Respondent’s concession and my review of the record, I find that Petitioner is entitled to compensation. This matter shall now proceed to the damages phase.

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master